



TERMS AND CONDITIONS FOR THE SUPPLY OF HARDWARE

1. DEFINITIONS

- 1.1. In these Terms and Conditions unless the context otherwise requires:
"Customer" means any person, firm, company or other legal person who places an order for the supply of Equipment;
"Equipment" means the hardware and associated items identified in the Quotation, Acknowledgement of Order or other relevant documentation;
"Celoxica" means Celoxica Inc. of 1133 Broadway, Suite 706, New York, NY 10010 ("Celoxica");
"Delivery Address" means the address of the Customer as set out in the Quotation and/or Acknowledgement of Order or other relevant documentation;
"Price" means the purchase or lease price and all other related charges quoted by Celoxica for the supply of the Equipment, including the charges set out in Clause 3.2 below;
"Quote"/"Quotation" means the quote/quotation issued to the Customer by Celoxica in any appropriate format;
"Acknowledgement of Order" means the acknowledgement of a Customer's purchase order by Celoxica.

2. GENERAL

- 2.1. These Terms and Conditions shall apply to all orders for Equipment placed with Celoxica by the Customer. Acceptance by Celoxica of any order will be made in writing, usually by sending an Acknowledgement of Order, and is conditional upon acceptance by the Customer of these Terms and Conditions which shall, in relation to the Equipment, override all other terms and conditions inconsistent herewith, whether express, implied or otherwise, including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document. Where any specific terms are contained in the Quotation and/or Acknowledgement of Order relating to the sale and supply of the Equipment, those specific terms override these Terms and Conditions.
- 2.2. Celoxica shall not be bound by these Terms and Conditions by issuing a Quotation to the Customer or by the Customer placing a purchase order unless and until Celoxica has accepted the order in writing or delivery of the Equipment has been effected.
- 2.3. Except as otherwise provided herein, no addition, amendment or modification of these Terms and Conditions is effective, unless in writing and signed or accepted by a director or the secretary of Celoxica. The Customer may not cancel or modify any order accepted by Celoxica (whether or not in writing) without Celoxica's consent.

3. PRICE

- 3.1. The Price quoted by Celoxica in the Quotation is valid for 30 days, effective from the date of the Quotation unless withdrawn sooner by Celoxica upon notice to the Customer.
- 3.2. Unless otherwise specified, the Price is exclusive of all delivery charges, insurance costs, handling charges, packaging charges and charges resulting from changes in any taxes, duties or similar levies and any applicable purchase or sales taxes, levies or duties from time to time in force including but not limited to Value Added Tax. All such charges will be paid by the Customer in addition to the Price and at the time of payment of the Price unless otherwise agreed in writing.

4. PAYMENT

- 4.1. The Customer must pay for the Equipment within 30 days of the date of Celoxica's invoice. Payment is to be made in the currency set out in the Quotation and/or Acknowledgement of Order or as otherwise agreed.
- 4.2. The Customer shall make all payments hereunder free and clear of, any deduction or set off or counterclaim or, save as required by law, any tax or other matter. All import duties, charges and assessments shall be paid by the Customer.
- 4.3. If the Customer shall at any time default in payment of the Price or any other charges payable hereunder on the due date Celoxica shall in addition and without prejudice to any other of its rights, have the right to refuse to supply any further Equipment, services or other products to the Customer or any other company in its Group.
- 4.4. Without prejudice to any other right of Celoxica, all overdue payments shall carry interest (after as well as before judgement) at 4% per annum above the base rate from time to time of Barclays Bank plc from the due date until payment, on the amount or amounts for the time being outstanding.

5. DELIVERY

- 5.1. Celoxica shall use its reasonable endeavours to despatch the equipment to the Delivery

Address on the date of despatch agreed between the parties (which shall be stated in Celoxica's acknowledgement of order or other appropriate communication) or as soon as possible thereafter.

- 5.2. Agreed dates for delivery are estimates only and Celoxica shall not be liable for any losses, costs, damages or expenses (including loss profits and damage to third parties) suffered by the Customer or any other person or company howsoever arising, whether directly or indirectly, out of any failure to meet any estimated delivery date.
- 5.3. Delivery shall be deemed to have taken place from the occurrence of the first point of time of the physical delivery of the Equipment to the Customer at the Delivery Address.
- 5.4. The Customer may not defer delivery of an accepted order without Celoxica's written approval.
- 5.5. A receipt purporting to be signed by or on behalf of the Customer shall be conclusive evidence of the delivery of the Equipment specified in the delivery or consignment note.
- 5.6. If the Equipment is not received within 14 working days of the date on the invoice or other appropriate communication the Customer shall immediately notify Celoxica and confirm such notification in writing. If no such notification is given within 14 days (or other agreed period) of delivery the Equipment shall be deemed to have been delivered in accordance with these Terms and Conditions.

6. INSPECTION AND RETURNS

- 6.1. The Customer shall inspect the Equipment immediately on receipt and shall, within 14 days of receipt of the Equipment (such period being confirmed by the Customer as a reasonable period to examine the Equipment for defects), notify Celoxica promptly in writing of any alleged non-conformance. Failure to notify Celoxica of any non-conformance within 14 days will be deemed as acceptance of the Equipment for all purposes.
- 6.2. Any request to return Equipment must be made in writing to Celoxica who will issue a returns authorisation number and notify the Customer of the applicable returns procedure. All returns shall be at the expense of the Customer.

7. DELIVERY, RISK AND TITLE

- 7.1. Delivery shall take place ex-works, at Celoxica's premises. The Equipment shall be at the Customer's risk from the time of delivery. Customer shall then be responsible for the satisfactory care and protection of the Equipment.
- 7.2. In the case where Equipment is purchased, title to the Equipment (excluding any intellectual property rights referred to in Clause 8.1 below) shall pass to the Customer when (i) the Equipment and (ii) all other equipment the subject of any other contract between Celoxica and the Customer (and any other company in the Customer's Group) which, at the time of payment of the full Price of the Equipment under these Terms and Conditions, have been delivered to the Customer but not paid for in full, have been paid for in full.
- 7.3. In the case where the Equipment is leased, title to the Equipment (including any intellectual property rights referred to in Clause 8.1 below) shall remain with Celoxica at all times..
- 7.4. In the case where the Equipment is purchased, until payment in full has been made the Customer shall hold the Equipment as bailee in a fiduciary capacity for Celoxica and it shall be the responsibility of the Customer to keep the Equipment in good repair and condition at its own expense. Until payment in full has been made the Customer shall not be entitled to sell, transfer, sub-licence, charge, assign by way of security or otherwise deal or encumber the Equipment or any part of it.
- 7.5. Celoxica (or its agent) shall be entitled to enter the Customer's premises without notice for the purpose of collecting the Equipment (for which payment has not been made in accordance with these Terms and Conditions) or any of it and the Customer therefore hereby grants Celoxica and its agents a licence necessary to effect such collection.

8. INTELLECTUAL PROPERTY AND USE

- 8.1. All intellectual property rights subsisting in the Equipment are owned by Celoxica or its licensors. This includes the design rights and semiconductor topography rights in the hardware within the Equipment and the copyright and other intellectual property rights in the software drivers or similar within the Equipment and also in the documentation associated with the Equipment. The sale or lease of the Equipment is conditioned upon the above rights remaining with Celoxica. By accepting and using the Equipment the Customer agrees to this.
- 8.2. Celoxica hereby grants a licence to the Customer in respect of the above intellectual property rights in order to allow Customer to use the Equipment in accordance with these terms and conditions. The Customer may sub-licence the intellectual property rights on the same terms on disposal of the Equipment in its entirety to a third party. However, the Customer may not resell or dispose of the Equipment or any interest therein howsoever to any third party if the title is held by Celoxica. Save as set out above, no rights whatsoever are granted to the Customer in respect of the intellectual property rights.

9. WARRANTIES

- 9.1. Unless otherwise specified, Celoxica warrants that for a period of 12 months from the date of delivery of the Equipment, the Equipment will operate substantially in accordance with the

specification in the documentation, instructions and other reference materials supplied with the Equipment and that the Equipment will be free from defects on delivery provided that (1) the Customer notifies Celoxica in writing (via email at support@celoxica.com) of any alleged defect within 14 working days of its discovery and (2) thereafter returns the Equipment to Celoxica in accordance with Celoxica's standard returns procedures in force from time to time.

- 9.2. CELOXICA'S ENTIRE LIABILITY AND THE CUSTOMER'S EXCLUSIVE REMEDY UNDER THIS WARRANTY IS THAT CELOXICA WILL AT ITS OPTION AND EXPENSE MAKE GOOD ANY SUCH DEFECT BY REPAIR OR REPLACEMENT IF IN THE OPINION OF CELOXICA THE DEFECT CONSTITUTES A BREACH OF THIS WARRANTY AND OCCURS DURING THE WARRANTY PERIOD. IT IS THE CUSTOMER'S RESPONSIBILITY TO SHIP THE DEFECTIVE PRODUCT AT THEIR OWN COST, RISK AND EXPENSE BACK TO CELOXICA'S OFFICES OR TO A SITE OR ADDRESS NOMINATED BY CELOXICA TO ENABLE CELOXICA TO INVESTIGATE ANY ALLEGED BREACH OF WARRANTY. IN THE EVENT THAT A DEFECT IN THE EQUIPMENT IS DISCOVERED CELOXICA WILL THEN AT ITS SOLE DISCRETION EITHER REPAIR OR REPLACE THE DEFECTIVE EQUIPMENT FREE OF CHARGE UNDER THE TERMS OF THIS CLAUSE AND DELIVER THE REPAIRED OR REPLACEMENT EQUIPMENT BACK TO THE CUSTOMER. FOR THE AVOIDANCE OF DOUBT, WHERE A DEFECT ARISES OR REPAIR IS REQUIRED AS A RESULT OF USAGE FALLING WITHIN CLAUSE 9.3 CELOXICA RESERVES THE RIGHT TO CHARGE FOR THE REPLACEMENT OR REPAIR OF EQUIPMENT.
- 9.3. Celoxica will not be responsible under this warranty:
- 9.3.1 for any defect resulting from misuse (including, in the reasonable opinion of Celoxica, overloading, overburdening, overstressing or other similar misuse), neglect, alteration, improper installation or problems with electrical power;
 - 9.3.2 for any defect resulting from combination with other electronic or computer equipment unless such combination is expressly agreed to by Celoxica,
 - 9.3.3 for any defect arising from usage not in accordance with product instructions or user manuals or other similar documentation, including the alteration or modification of any part of the Equipment (unless such modification is expressly agreed to by Celoxica);
 - 9.3.4 for any defect arising from any, repair or modification by anyone other than Celoxica (without the express consent of Celoxica) or other causes outside of Celoxica's reasonable control;
 - 9.3.5 if Celoxica is unable to re-produce a defect or fault under their diagnostic test processes after using all reasonable endeavours to do so;
 - 9.3.6 where, in the reasonable opinion of Celoxica, logic has been configured incorrectly, causing damage to the logic or other components;
 - 9.3.7 where repairs to items of Equipment are, in the reasonable opinion of Celoxica, beyond economic repair, or for which spare parts are no longer readily available;
 - 9.3.8 where any supply of parts or work is required because of the failure of the Customer promptly to inform Celoxica of any faults in the operation of the relevant items of Equipment or the adding or removal of any accessories, attachments or other devices; or
 - 9.3.9 where items of Equipment are not in good working condition at the commencement of these terms other than where the Equipment is new.
- 9.4. THE EXPRESS WARRANTIES MADE BY CELOXICA IN THESE TERMS AND CONDITIONS ARE IN LIEU OF AND TO THE EXCLUSION, TO THE FULLEST EXTENT PERMITTED BY LAW, OF ALL OTHER CONDITIONS, TERMS, WARRANTIES AND UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION AS TO THE CONDITION, QUALITY, MERCHANTABILITY, PERFORMANCE AND FITNESS FOR PURPOSE OF THE EQUIPMENT OR ANY PART THEREOF.

10. LIMITATION OF LIABILITY

- 10.1. Celoxica accepts liability without limit for death or personal injury which is due to the negligence of Celoxica or its employees.
- 10.2. CELOXICA ACCEPTS LIABILITY FOR DIRECT PHYSICAL DAMAGE TO THE TANGIBLE PROPERTY OF THE CUSTOMER DUE TO THE NEGLIGENCE OF CELOXICA OR ITS EMPLOYEES IN PERFORMING ITS OBLIGATIONS HEREUNDER PROVIDED THAT CELOXICA'S TOTAL LIABILITY FOR ANY SUCH DAMAGE SHALL NOT EXCEED £500,000 IN RESPECT OF EACH EVENT OR SERIES OF EVENTS ARISING FROM THE SAME CAUSE.
- 10.3. SUBJECT TO CLAUSE 10.1, IN NO EVENT SHALL CELOXICA BE LIABLE TO THE CUSTOMER UNDER OR IN CONNECTION WITH THESE TERMS AND CONDITIONS FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGE, LOSS, COST OR EXPENSE OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, INTEREST, BUSINESS REVENUE OR SAVINGS, LOSS OF GOODWILL, LOSS OF CONTRACTS OR LOSS OF OR CORRUPTION TO DATA, AND WHETHER SUCH DAMAGES, LOSSES, COSTS OR EXPENSES ARISE IN CONTRACT, TORT OR OTHERWISE.
- 10.4. IN ALL OTHER CASES NOT FALLING WITHIN CLAUSES 10.1 AND 10.2 (BUT EXCLUDING LIABILITY WHICH MAY NOT BY LAW BE EXCLUDED OR LIMITED) THE TOTAL LIABILITY OF CELOXICA IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE UNDER OR IN CONNECTION WITH THE SUBJECT MATTER OF THESE TERMS

AND CONDITIONS SHALL NOT EXCEED IN AGGREGATE THE PURCHASE PRICE PAID BY THE CUSTOMER FOR THE EQUIPMENT IN RESPECT OF WHICH THE LIABILITY ARISES.

- 10.5. Celoxica accepts no liability arising out of any of the circumstances listed in Clause 9.3 above or breach of clause 11 below.

11. RESTRICTIONS ON USE

The Equipment is not designed, intended, or authorised for the development of designs, components and circuits for use in systems intended for, or in relation to the operation of, weapons, weapons systems, nuclear installations, means of mass transportation, aviation, life-support computers or equipment (including resuscitation equipment and surgical implants), pollution control, hazardous substances management, and other business critical applications, mission critical or safety critical environments or for any other application in which the failure of the Equipment could create a situation where personal injury or death may occur. Should the Customer provide any Equipment for any such unintended or unauthorised application, the Customer shall indemnify and hold Celoxica and its officers, employees, subsidiaries, affiliates, and distributors harmless against all claims, costs, damages, expenses, and reasonable legal fees arising out of, directly or indirectly, any claim of personal injury, death, economic loss or damages associated with such unintended or unauthorised use or liability of any kind arising from such use described above or in connection with the use of the Equipment, even if such claim alleges that Celoxica was negligent regarding the manufacture and/or supply of the Equipment.

12. U.S. GOVERNMENT

The software within the Equipment and the associated documentation are "commercial items" as that term is defined in 48 CFR 2.101 of the U.S. Code of Federal Regulations ("CFR"). The Equipment is classified as "commercial software" and the Documentation is classified as "commercial software documentation" as those terms are used in 48 CFR 12.212, Section 2.212 of the U.S. Federal Acquisition Regulations ("FAR") and Section 227.7202 of the Defense FAR ("DFAR"). Accordingly, pursuant to 48 CFR 12.212, Section 2.212 of the FAR, and Section 227.7202 of the DFAR, U.S. Government licensees shall have only those rights specified in this Licence, and Celoxica shall not be required to: (1) furnish technical information related to the Software or the Documentation that is not customarily provided to the public; or (2) relinquish to, or otherwise provide, the U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose the Software and the Documentation except as mutually agreed by the parties. The manufacturer is Celoxica.

13. EXPORT MATTERS

The Customer agrees that it will not export or re-export the Equipment or associated documentation in any form without obtaining any applicable government or other export licences. Failure to comply with this provision is a material breach of these terms.

14. TERMINATION

- 14.1. The contract between Celoxica and the Customer may be terminated:

- 14.1.1 immediately by Celoxica if the Customer fails to pay any sum due to Celoxica within 30 days of the due date thereof;
- 14.1.2 immediately by either party if the other commits any material breach of any term of these Terms and Conditions and which (in the case of a breach being capable of remedy) shall not have been remedied within 30 days of a written request to remedy the same; or
- 14.1.3 immediately by either party if the other becomes insolvent or is otherwise unable to pay its debts as they fall due within the meaning of S.123 of the Insolvency Act 1986 (or other analogous legislation in other relevant jurisdictions) or otherwise ceases to continue all or a major part of its business or operations or threatens to do so.

- 14.2. These Terms and Conditions shall remain in full force and effect in respect of any matters, covenants or conditions which shall not have been done, observed or performed prior to termination by either party and the other party shall be at liberty to enforce the same in accordance with the provisions of these Terms and Conditions. In particular all provisions relating to obligations of indemnity, obligations to make payments of sums due up to termination and all other obligations which by their nature are to continue after termination, shall survive termination of this agreement.

15. MISCELLANEOUS PROVISIONS

- 15.1. If the Customer has its principal place of business located outside the United States, these Terms and Conditions shall be construed in accordance with and governed by English Law, and each party agrees to submit to the exclusive jurisdiction of the English Courts.
- 15.2. If the Customer has its principal place of business in the United States, these Terms and Conditions shall be construed in accordance with and governed by the laws of the State of New York, U.S.A., excepting those portions related to conflict of laws, and each party agrees to submit to the exclusive jurisdiction of the Federal and State courts in New York, New York.
- 15.3. The Customer undertakes to comply with any statutes, laws, regulations or similar of any jurisdiction within which it uses the Equipment.

- 15.4. In the event that any or any part of these Terms and Conditions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall to that extent be severed from the remaining terms and conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 15.5. Save as set out herein, neither party shall be entitled to assign all or any of their rights and obligations hereunder without the prior written consent of the other.
- 15.6. Celoxica shall be under no liability to the Customer in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of *force majeure*.
- 15.7. Failure or neglect by Celoxica to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of Celoxica's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice Celoxica's rights to take subsequent action. No waiver of any term, provision, or condition of these Terms and Conditions, shall be valid unless evidenced in writing and signed by the waiving party.
- 15.8. No third party shall be deemed a third-party beneficiary under these Terms and Conditions, and nothing in these Terms and Conditions shall confer upon a third party any right that may arise pursuant to the Contracts (Rights of Third Parties) Act 1999.